IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRL.R.C.NO.1066 OF 2003

Kolingiammal .. Petitioner

-vs-

1. State by Inspector of Police,
   Mangalamedu
   Perambalur District

2. Kannusamy

3. Cinnu(a)Murugesan

4. Subramaniyan

5. Murugesan .. Respondents

This Revision is filed against the Judgment of the learned District Judge,Perambalur in S.C.No.52 of 2002 dated 30.4.2003.

For petitioner :: Mr.R.Singaravelan

For respondents :: Mr.V.R.Balsubramanian
Addl. Public Prosecutor-R1
Mr.A.Sirajudeen-R2 to R5

O R D E R

This revision has been preferred by P.W.7,Kolingiammal, the widow of one of the victims in the double murder case in S.C.No.52 of 2002 on the file of the learned District Judge,Perambalur.

2. The short facts of the prosecution case relevant for the purpose of deciding this revision are as follows:
Due to previous enmity between the accused and the deceased No.1 Jayaraman and Deceased No.2 Kolinginathan, on 21.12.1998 at 4.30p.m., near Koneri river bund , Valikandapuram village, while A4 was holding the deceased Jayaraman, A3 had stabbed Jayaraman on his stomach and all over his body resulting the death of Jayaraman on 7.1.1999 at Government Hospital ,

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Thanjavur. A2 to A4 also caused grievous injuries with iron rod on Jayaraman, on his stomach, chest and back and hence A1 to A4 were charged under Sections 302 IPC and 302 IPC r/w 114 IPC.

2a)It is the further case of the prosecution that Kolinginathan was also attacked by A1 with a knife at the same time when Jayaraman was attacked by A1 to A4 which resulted in the instantaneous death of Kolinginathan.

3. The learned Judicial Magistrate Perambalur had taken the case on file and after furnishing copies under Section 207 of Cr.P.C. had committed the case to the Court of Sessions Under Section 209 of Cr.P.C. and on appearance of the accused, the learned Sessions Judge has framed charges under Sections 302 IPC(2 counts) against A1 and under Section 302 IPC r/w 114 IPC against A2 to A4 and when questioned the accused pleaded not guilty.

4) On the side of the prosecution P.Ws 1 to 12 were examined. Exs P1 to P13 were exhibited. M.Os 1 and 2 were marked.

5) P.W.1 is an eye witness to the occurrence, according to the prosecution. According to P.W.1 on 21.12.1998 at about 4.30p.m., while he was returning to Mettupalayam from Valikandapuram after purchasing groceries , the deceased Kolinginathan, another deceased Jayaraman were taking bath in the river and at that time A1 Kannusamy, A2 Murugesan, A3 Subramaniyan, A4 Murugesan,S/0 Subbudayar came from behind a bush and A1 attacked Kolinginathan on the left side flank with a suri knife causing instantaneous death and three other accused viz., A2 to A4 had attacked both Kolinginathan and Jayaraman with iron rod and all the accused ran away from the place of occurrence, leaving Jayaraman in a serious condition. Since Jayaraman was conscious, he was taken in a bicycle to the hospital by him(P.W.1). The body of Kolinginathan was retrieved from the river water and laid near the river bund. The doctor at Perambalur Hospital referred Jayaraman to Trichy Government Hospital from where he was given treatment for 7 or 8 days and since he could not recover completely, from there,he was referred to Thanjavur Medical College Hospital for further treatment. But without responding to the treatment Jayaraman breathed his last at Thanjavur Medical College Hospital three days later.

5a) P.W.2 is also an another ocular witness on the side of the prosecution who would also corroborate the evidence of P.W.1 to the effect that on 21.12.1998 at about 4.30p.m., while he was returning to Valikandapuram from attending to his personal work,he took bath at Koneri River along with P.W.1 and at that time, Jayaraman was crossing the river with his cycle along with Kolinginathan,before they could cross the river, they were attacked by A1 to A4 . The overt-act attributed by P.W.2 is that A1 had attacked Kolinginathan with a knife and A2 to A4 have attacked both Kolinginathan and Jayaraman with iron rods. Kolinginathan had

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sustained grievous injuries which resulted in his instantaneous death and Jayaraman began to ran away from the scene of occurrence after leaving his cycle, A1 to A4 chased and attacked him with a knife and iron rod causing grievous injuries all over his body and thereafter the accused ran away from the scene of occurrence and when P.W.2 saw Jayaraman along with P.W.1 , he was in a precarious condition after , retrieving the body of Kolinginathan from the river, the corpse was left at the bund of the river and the injured Jayaraman was taken in a cycle to Valikandapuram and was removed to Perambalur Government Hospital in susuki motor cycle by another Kolinginathan S/o Murugesan. After admitting at Perambalur Government Hospital, he went to the place of occurrence where the Inspector of Police, Mangalmedu was present. Later Jayaraman was referred to Trichy Government Hospital from there, he was taken to Thanjavur Medical College Hospital where he died two days later.

5b) P.W.10 is the then Sub Inspector of Police, Mangalmedu police station. On intimation from the Government hospital, Perambalur, immediately he rushed to the hospital and recorded the statement of Jayaraman who was taking treatment at the hospital.
Ex P9 is the statement of Jayaraman . On the basis of Ex P9, P.W.10 has registered a case under Sections 302 IPC and 307 IPC under Mangalmedu police Station under Crime No.916 of 1998. Ex P10 is the first information report. He had forwarded the express first information report to the concerned officials including the concern Judicial Magistrate.

5c) P.W.11 is the then Inspector of Arumbavur police station was also in charge of Mangalmedu police station ,since Mangalmedu Inspector was on leave, took up investigation in Mangalmedu Police Station under Crime No.916/98 and proceeded to Thanjavur Medical College Hospital and conducted inquest on the corpse of Jayaraman which was kept in the mortuary of Thanjavur Medical College Hospital. The inquest was conducted by P.W.11 between 12.00noon and 2.30p.m., on 8.1.1999 in the presence of panchayatars . Ex P11 is the inquest report relating to deceased Jayaraman.

5d) P.W.12 is the Inspector of Police who has conducted an investigation, thereafter he went to the place of occurrence on 22.12.1998 at about 6.00 a.m., and prepared observation mahazar in the presence of P.W.8 and recovered blood stained earth M.O.1 and sample earth M.O.2 from the scene of occurrence under Ex P7 recovery mahazar. Ex P12 rough sketch was also drawn by P.W.12. He had conducted inquest on the corpse of Kolinginathan on the same day in the presence of panchayatars. Ex P13 is the inquest report relating to the deceased Kolinginathan. P.W.12 had arrested A1 on 22.12.1998 at 3.00 p.m. and recorded his confession statement in the presence of P.W.8. The admissible portion of the confession statement is Ex P8. P.W.12 has not recovered any material object on the basis of the confession statement of A4. The corpse of Kolinginathan was entrusted to P.W.9 for handing over the same to the doctor at Perambalur Hospital for postmortem.

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5e) P.W.4 is the doctor who had conducted autopsy on the corpse of Jayaraman on 8.1.1999 at 3.45.p.m. and the body was identified by P.W.9. The doctor has noticed as many as 19 injuries on the corpse of Jayaraman. Ex P3 is the post mortem certificate. The doctor has opined that due to injury Nos.1 and 2, the deceased Jayaraman would have died.

5f) P.W.5, the doctor who had examined other injured Jayaraman on 21.12.1998 at 5.30p.m, at Perambalur Government Hospital. On examination, he has found a cut injury on the right palm measuring 1 cm x 1 cm x ½ cm. An abrasion on the right hand measuring 5 cm. Three injuries on the right side of the stomach and another cut injury on the left hand below the left thumb measuring 6cm x 2 cm x 1 cm. An abrasion seen on the private part. The cut injury on the right side of the chest measuring 1 ½ cm x 1 cm x 1 cm. Ex P4 is the wound certificate issued by him(P.W.5) on the same day at about 6.00p.m. P.W.5 had also treated A1 for the injuries he had sustained in the same occurrence. On the examination, he found that 1)cut injury on the right shoulder measuring 3 cm x 3 cm x 2 cm 2)another cut injury on the right shoulder measuring 3 cm x 3 cm x 2 cm .3) Two cut injuries each measuring 3 cm x 3 cm x 2 cm on the centre of the back.4) An abrasion measuring 6 cm on the left side of the head and the skin was found peeled on that region.5) On the right thigh a cut injury measuring 5 cm x 4 cm x 3 cm. Since he was in a serious condition, he was referred to Trichy Government Hospital. Ex P5 is the copy of the accident register.

5g)P.W.6 is the aunt of deceased Kolinginathan. She would depose that she saw the corpse of Kolinginathan on the date of occurrence and also saw Jayaraman at Perambalur Government Hospital where Jayaraman had informed her that the accused have attacked him and Kolinginathan with a knife.

5h) P.W7 is the widow of Kolinginathan. She would depose that there was a land dispute prevailing between the accused and her husband Kolinginathan at the time of occurrence.

6. After following the formalities, P.W.12 has completed the investigation and filed charge sheet against the accused under Sections 302 IPC r/w 143 IPC and 34 IPC.

7. When incriminating circumstances were put to the accused, the accused would totally deny their complicity with the crime.

8.After going through evidence before him, both the oral and documentary, the learned Sessions Judge has held that the prosecution has not proved the guilt of the accused beyond any reasonable doubt and accordingly acquitted all the accused from the charges levelled against them under Section 235(1) of Cr.P.C. Aggrieved by the findings of the learned trial Judge, the wife of the deceased Kolinginathan (P.W.7) has preferred this revision.

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9. Now the point for determination in this revision is whether the findings of the learned trial Judge is liable to be set aside for the reasons stated in the memorandum of revision?

10. Heard Mr. R.Singaravelan, learned Counsel for the revision petitioner, Mr.V.R.Balsubramanian, learned Additional Public Prosecutor appearing for the State-R1 and Mr.A.Sirajudeen, learned counsel appearing for R2 to R5 and considered their rival submissions.

11.The Point:
Mr.R.Singaravelan, learned Counsel appearing for the revision petitioner would contend that the entire case of the prosecution rests on the so called ocular witnesses P.W.1 and P.W.2 but they could not be an eye witnesses to the occurrence, basing his reliance on the discrepancies of P.W.1 and P.W.2 and the complaint Ex P9 said to have been given by one of the deceased Jayaraman before the Investigating Officer, while he was alive on 21.12.1998. The learned counsel would draw the attention of this Court to Ex P9 complaint preferred by Jayaraman wherein there is no mention either about the presence of P.W.1 or about the presence of P.W.2 at the time of occurrence at the place of occurrence.

11a) Yet another flaw noted by the learned counsel appearing for R2 to R5/accused in the case of the prosecution is that Section 161(3) Cr.P.C. Statement of P.W.2 was recorded by P.W.12, the Investigating Officer on 21.12.1998 but it has reached the Court only on 26.4.2001 ie., two years later. But in Section 161(3) Cr.P.C.statement of P.W1 Natesan, would categorically state that only after hearing the occurrence, he went and saw the injured whereas while deposing before the trial Court, his evidence is that he had seen the occurrence. There is no explanation forthcoming from the Investigating Officer, why P.W.2's statement under Section 161(3) Cr.P.C. was not sent to the Court immediately and there was no explanation forthcoming for the delay of two years in sending P.W2's statement under Section 161(3) Cr.P.C. to the Court by the prosecution. Only on that score, the learned trial Judge has come to a conclusion that no reliance can be attached to the evidence of both the so called ocular witnesses P.W.1 and P.W.2.

11b) Further in Ex P13 inquest report relating to the deceased Kolinginathan and in the inquest report Ex P11 relating to the deceased Jayaraman both P.Ws 1 and 2's name do not find a place. The non examination of P.Ws 1 and 2 at the time of inquest of both the deceased itself is a fatal to the case of the prosecution as rightly held by the learned trial Judge.

11c) Further the non explanation of injuries sustained by A1 and A3 were also lead us to an adverse inference against the case of the prosecution as rightly held by the learned trial Judge. Even P.W.12 the Investigating Officer, in the re-examination would admit that a counter

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case has been registered on the complaint preferred by A1 under Crime No.917 of 1998. But neither copy of the first information report in Cr.No.917 of 1998 nor final report in the said case was filed before the trial Court to show who are the aggressor for the occurrence. No doubt two persons have been done to death in this case.

11d) One of the victims Jayaraman was alive for nearly 15 days from the date of occurrence, the prosecution has not taken minimum care to record his dying declaration by the Judicial Magistrate. In Ex P9 the earliest statement recorded from Jayaraman, only his left thumb impression is said to have been obtained. The learned trial Judge has observed in his judgment that Jayaraman is a foreignreturn and he knows to sign and there is no explanation forthcoming from the Investigating Officer why the signature of Jayaraman was not obtained in Ex P9. The prosecution has not taken the minimum pain to send the same to a fingerprint to prove that the left thumb impression contain in Ex P9 belongs to the deceased Jayaraman. Under such circumstances, I do not find any reason to interfere with the findings of the learned District Judge, Perambalur in C.C.No.52 of 2002.

12. In fine, the revision is dismissed confirming the order in C.C.No.52 of 2002 on the file of the Court of District Judge, Perambalur.

13. The learned Additional Public Prosecutor relying on a decision reported in K.Chinnasamy Reddy-vs- State of Andhra Pradesh(AIR 1962 SC 1788 would contend that while exercising the revisional power of this Court, this Court can either order for re-trial or for rehearing for the purpose of re-appreciation of the evidence. But I am of the opinion that no purpose will be served, if retrial or re hearing is ordered in this case because both the alleged ocular witnesses P.Ws 1 and 2 are proved to be procured witnesses for the purpose of this case.

14. It is pertinent to note in this case that the Investigating Officer Mr.S. Gnanasekaran (P.W.12) has not discharged his duties properly and to the satisfaction of his conscience. I record my displeasure in this case as to the slipshod and lethargic manner in which the investigation has been conducted by P.W.12,the Investigating Officer,Mr.S.Gnanasekaran. A copy of the order to be marked to the Director General of Police for taking appropriate action against P.W.12, Mr.S.Gnanasekaran, who had bungled in the investigation in this double murder case. I am of the view that it is a fit case in which as a moral obligation the Government shall give suitable compensation to the legal heirs of the victims viz., Kolinginathan and Jayaraman which shall not be less than Rs.2,00,000/- (Per unit) within a period of six months. After paying the compensation to

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the legal heirs of the deceased, the Government is at liberty to recover the same from P.W.12, the Investigating Officer, Mr.S.Gnanasekaran.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg

To

1. The District Judge,Perambalur.
2. The Inspector of Police, Mangalamedu Police station, Perambalur District
3. The Public Prosecutor, High Court, Madras
4. The Chief Secretary, Government of Tamil Nadu, Secretariat Fort St.George, Chennai.
5. Director General of Police(Law and Order) Chennai-4

+ 1 CC To Mr.R.Singaravelan, Advocate SR NO. 25755
+ 1 CC To Mr.Siraj and Siraj, Advocate SR NO.25568

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